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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: EAC 02 280 50431 Office: VERMONT SERVICE CENTER Date: FEB 25 2005

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability. The petitioner seeks employment as a research scientist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

It appears from the record that the petitioner seeks classification as an alien of exceptional ability, although prior counsel referenced the term "exceptional" generally without addressing the regulatory criteria for this classification. This issue is moot, however, because the record establishes that the petitioner holds a Ph.D. degree in Civil Engineering from Columbia University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. [redacted] November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, engineering. Without discussion, the director concluded that the proposed benefits of his work, improved damage detection and structural health monitoring, would not be national in scope. As the petitioner's work relates the safety of bridges, the proposed benefits of his work is very similar to the proposed benefits at issue in *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 217. As that precedent decision held such proposed benefits to be national in scope, we withdraw the director's contradictory finding on this issue.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. On appeal, counsel asserts that the labor certification only tests for the availability of qualified employees without consideration of individual talents. Eligibility for the waiver, however, must ultimately rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

[redacted] a professor at Columbia University, asserts that the petitioner has produced "unique advances of the forefront of the field" but provides no examples of these advances. Rather, he discusses the focus of the petitioner's work, the generation of methods to create mathematical models that are nonlinear, important for monitoring progressive damage to civil engineering structures after natural disasters or from aging. [redacted] does not provide any examples of structures that have been evaluated using the petitioner's methods. Dr. [redacted] a member of the petitioner's Ph.D. defense committee at Columbia University,

provides similar information, affirming the importance of the "class of problems" to which the petitioner's work is applicable, but providing no examples of how the petitioner's work has been applied.

Dr. [redacted] a professor at the University of Southern California who met the petitioner at a conference, provides similar information to that discussed above. Two other faculty members at Columbia University discuss the importance of the petitioner's area of research and his goals. They provide general praise of the petitioner's skills, but provide no specifics regarding how his work has impacted the field.

[redacted] a Ph.D. candidate at Columbia University, and two former fellow graduate teaching assistants at Columbia University, [redacted] and [redacted] provide more detail. [redacted] asserts that the petitioner "developed a versatile identification approach applicable to a wide variety of mechanical/civil systems." According to [redacted] the approach "can identify on-line the locations and amount of damage in structures subjected to earthquake excitation." [redacted] then discusses the goal of the petitioner's current project, but does not assert that the petitioner has already made any groundbreaking advances towards that goal.

[redacted] asserts:

> Based on the needs of instantaneous and automatic real-time tracking of structural health condition (extremely important in cases of sudden damage), [the petitioner] developed a practical on-line identification approach to identify on-line the occurrence and amount of damage in structures subjected to loads. The procedure he created is the adaptive identification scheme that has proven to be successful in various civil engineering applications and relies only on few measurement data. This is a quite realistic scenario in civil engineering applications where usually only few sensors are available and the recorded signals are strongly affected by noise. To practically identify structural systems in model-unknown structures, [the petitioner's] research work also developed a suitable power series modeling proved to be very effective in enhancing the entire adaptive identification methodology.

[redacted] does not provide examples of structures where the petitioner's evaluation methods were used and the record contains no attestations from government agencies confirming application of the petitioner's methodologies.

[redacted] asserts that the petitioner's identification methodology "has impressively solved a long-lasting problem that the nonlinear structural identification technology can be effectively implemented on-line even in a large earthquake." [redacted] expresses his belief that the petitioner's research "will have widespread implementation as an approach." The record, however, lacks attestations from government agencies expressing their interest in applying the petitioner's approach.

Several references assert that the petitioner is being considered for a faculty position at another institution. Ability to secure employment is not a basis for waiving the labor certification process. The references also claim that the petitioner's influence in the field is demonstrated by his publications and invitations to present his work. The petitioner failed to submit copies of the first pages of his published articles, the proceedings of the conferences where he presented his work, or the programs evidencing his presentations. The director determined that the record contained no evidence that independent researchers have cited the petitioner's work. On appeal, counsel asserts that the director "overlooked [the petitioner's] attainment in this regard." The petitioner submits three articles that cite his work at length. All three articles, however, are dated after the date

of filing and cannot be considered evidence of his eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). A petitioner cannot file his petition based upon completed research that he hopes will prove influential at some future date. Moreover, it is difficult to see how the director "overlooked" evidence that was not submitted prior to the appeal.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. The petitioner has not demonstrated a track record of success with an influence beyond his immediate circle of colleagues.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.